IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO. 395 Of 2007.

Date of decision: April 17,2007.

Mrs. Suman Verma and Anr. ……. Petitioners.

Vs.

State of H.P. & Ors. ……. Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the petitioner: Mr. Surinder Sharma, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. Advocate General for respondents 1 to 3 & 5.

Mr. Ramesh Sharma, Advocate,vice Mr. Jagdish Thakur, Advocate for respondent No.4.

Mr. Ajay Kumar, Advocate, for proposed respondent No.6.

Deepak Gupta, J.(Oral).

The petitioners are the President and Vice-President respectively of Municipal Council, Kangra. There are nine elected members in this Municipal Council. A No Confidence Motion was moved against the present petitioners signed by five members including one Ashwani Kumar. The Sub Divisional Officer (Civil), Kangra issued notice dated 12.3.2007 (Annexures PC & PD), convening the special meeting to consider the said no confidence motion moved by the members of Municipal Council against the President and Vice President. This meeting was fixed at 11.A.M. on 28.3.2007.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

Thereafter, the petitioner filed the present writ petition in this Court, challenging the action of the respondents on various grounds. According to the petitioners, Annexures PC and PD should be quashed and set-aside and they had also alleged that the no confidence motion was not moved or signed by Ashwani Kumar, one of the Ward Member elected from Ward No.3 and he was kidnapped by the other ward members. The allegations in this behalf are contained in para-16 of the petition and read thus:-

> "**That it is respectfully submitted for the completion of facts that four members i.e. Shri Bal Krishan Sharma, Smt. Bhawana Gupta, Shri Ashok Sharma and Smt. Urmil Sharma have kidnapped one member Shri Ashwani, who has been elected from Ward No.3, on 26.2.2007. The kidnapping of Shri Ashwani has been done by Shri Bal Krishan Sharma and others to seek his support by way of unconstitutional methods and to prevent him from casting vote in favour of the petitioners on 28.3.2007. It is humbly submitted that the entire exercise which has resulted in the kidnapping of Shri Ashwani, who is supporter of the petitioners, is against the democratic process. Shri Ashwani has been kidnapped by Shri Bal Krishan Sharma & others on 26.2.2007 and he is in their illegal custody till date.**"

The aforesaid Ashwani Kumar has moved C.M.P. No.842 of 2007 before us, in which he has submitted that he has not been kidnapped and he is a free person.

It would be pertinent to mention here that serious allegations of kidnapping were leveled by the petitioners against the four members of the Municipal Council namely, Bal Krishan Sharma, Smt. Bhawna Gupta,

Shri Ashok Sharma and Smt.Urmil Sharma. However, the petitioner did not deem it fit or proper to array the alleged kidnappers and the so-called kidnapped person Ashwani Kumar as parties in the writ petition. It is obvious that no order could have been passed at the back of the said persons.

Shri Surinder Sharma, learned counsel for the petitioner drew our attention to Rule 8A of Himachal Pradesh Municipal (Reservation and Election to the office of the President and Vice President) Rules, 1995 and submits that the Annexures PC and PD have not been issued in terms of Rule 8A, inasmuch as the copy of the notice seeking requisition of the meeting was not served upon the petitioner. From the material on record, it is clear that after the said notice seeking requisition of meeting to move a motion of no confidence was moved against the petitioners by five elected members, the Deputy Commissioner, Kangra issued an order dated 7th March, 2007, whereby in terms of Rule 8A, he had ordered and authorized the Sub Divisional Officer (Civil), Kangra to circulate to each member a copy of the requisition and to convene a special meeting by giving notice of not less than 15 days to all the elected members of the Municipal Council, Kangra, for consideration of the motion.

A perusal of Annexures PC and PD which are the notices issued for convening the meeting(s) do not show that the copy of requisition whereby such meeting was sought to be convened was ever served upon the elected members. We are of the considered view that in view of the pre-emptory and mandatory requirements of Rule 8A and the directions given by the Deputy

Commissioner, Kangra vide his office order dated 7th March,2007, the Sub Divisional Officer (Civil) was bound to send a copy of the requisition to all the elected members of the Municipal Council. This having not been done, the meeting which was convened for 28.3.2007 was not properly convened. In fact this meeting never took place in view of the interim orders passed by this Court.

In view of the above discussion, the writ petition is allowed to the limited extent that the meeting fixed for 28.3.2007 was not properly convened, inasmuch as copy of the requisition was not supplied to all the elected members. We further direct the Deputy Commissioner, Kangra or his authorized Officer, to ensure that fresh meeting is called for after sending requisition to all the elected members in terms of Rule 8A of the Rules of the rules aforesaid. The Deputy Commissioner, Kangra is directed to ensure that he shall initiate proceedings in this behalf immediately and that entire process of convening the meeting is completed latest by 31st May, 2007.

Before parting with the petition, we must observe that the petitioners have made absolutely reckless and unsubstantiated allegations that Ashwani Kumar was kidnapped. These allegations apparently are false in view of the application and affidavit filed by Ashwani Kumar. Therefore, we partly allow the writ petition. We therefore burden the petitioners with costs of Rs.5,000/- to be borne by them in equal shares. The petitioners are directed to deposit the costs in the Advocates Welfare Fund (Trustee Committee) of Bar Council of H.P. within six weeks from today.

CMPs No.698 & 842 of 2007.

No order in view of the disposal of the main writ petition.

(Deepak Gupta)
Judge.

April 17, 2007.
(Pds)

(Surinder Singh)
Judge.